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10 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 CITY OF LOS ANGELES, ACTING BY
12 AND THROUGH ITS BOARD OF
HARBOR COMMISSIONERS,

13 Plaintiff,

14 v.

15 NATIONAL UNION FIRE
16 INSURANCE COMPANY OF
17 PITTSBURGH, PA, and Does 1 thru 10,
Inclusive,

18 Defendant.

Case No. 2:12-cv-07662-R (AGRx)
Assigned to: Hon. Manuel L. Real

[California State Court Case No.
BC489599 Filed: August 3, 2012]

**PROTECTIVE ORDER
GOVERNING CONFIDENTIAL
INFORMATION**

Discovery Cutoff: 09/16/13
Motion Cutoff: None
Trial Date: 11/05/13

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21 After having reviewed the Stipulation of the Parties Regarding
22 Confidentiality of Documents and Things, and good cause appearing, this Court
23 orders as follows:
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25 1. This Order governs the use of all produced documents, responses to
26 interrogatories and requests for admissions, deposition transcripts, and any other
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1 information, documents, objects or things, as well as any and all copies, abstracts,
2 digests, notes, and summaries thereof, that have been or will be produced by any
3 party or third-party (the “Producing Party”) in this Litigation pursuant to the
4 Federal Rules of Civil Procedure. These materials are collectively referred to
5 hereinafter as “Discovery Material.”
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8 2. Any Discovery Material produced by any party or third-party as part
9 of discovery in this Litigation may be designated by the Producing Party as
10 “CONFIDENTIAL” as follows:
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12 a. The Producing Party may designate as “CONFIDENTIAL” any
13 Discovery Material that it produces in this Litigation which it
14 believes constitutes, contains, reflects or discloses confidential,
15 non-public research and analysis, development or commercial
16 or personal information or Discovery Material protected by the
17 attorney-client and/or work product privileges, or other
18 information for which a good faith claim of need of protection
19 from disclosure can be made under the Federal Rules of Civil
20 Procedure and/or other applicable law (“Confidential
21 Material”).
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25 3. No Discovery Material shall be marked “CONFIDENTIAL” if it:
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- a. Was known to the receiving party without obligation of confidentiality prior to disclosure by the Producing Party, as evidenced by the receiving party's written records;
- b. Is subsequently disclosed to the receiving party by a third-party having no obligation of confidentiality to the Producing Party with respect to such information;
- c. Is independently developed by employee(s) of the receiving party who had no access to such information before such development; or
- d. Is published or becomes generally known to the public through means not constituting a breach of this Order or an obligation of confidentiality to the producing party.

Furthermore, information already in the possession of the Receiving Party shall not become Confidential Information merely because the Producing Party produces copies stamped Confidential Information.

4. Any Discovery Material that is produced during this Litigation voluntarily, in response to a discovery request, or pursuant to a Court Order, in oral, written, or other form, including as part of any document, including but not limited to transcripts, exhibits, answers to interrogatories, as well as any physical object, recording, electronic file, or other thing, that is asserted by the Producing

1 Party to contain or constitute Confidential Material shall be so designated by the
2 Producing Party.

3
4 a. Documents and Physical Items: If Confidential Material is
5 contained in a document or other physical item, such
6 documents and physical items shall be clearly and prominently
7 marked on their face with the appropriate legend:
8 “CONFIDENTIAL”. When an item (such as a disk) containing
9 more than one electronic file is produced and the item bears a
10 confidentiality stamp, all electronic files on that disk shall be
11 deemed so designated unless an individual file on the item
12 contains a higher designation.
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16 b. Transcripts: Deposition or other pretrial testimony may be
17 designated as “Confidential” by (i) a statement on the record,
18 by counsel, at the time of such disclosure, or (ii) written notice
19 sent to all counsel of record for the parties within fifteen (15)
20 business days after receipt of the transcript of the deposition or
21 other pretrial testimony unless the parties agree to an extension
22 of this time period for designation. Notwithstanding any
23 provision of this subsection, Discovery Material used or
24 referenced during a deposition or other pretrial testimony shall
25 maintain any confidentiality designation accorded such material
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1 hereunder regardless of the designation of any part of the
2 transcript.

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4 c. Information in Other Forms: All Confidential Material not
5 reduced to documentary, tangible, or physical forms or that
6 cannot be conveniently designated shall be designated by the
7 Producing Party by notifying all parties of the appropriate
8 designation in writing.
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10 5. In the absence of written permission from the Producing Party or
11 court Order, Discovery Material designated as "CONFIDENTIAL" shall not be
12 disclosed to any person other than the following individuals, who are each deemed
13 a "Qualified Person" under this Paragraph:
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16 a. counsel of record for parties to this Litigation and their support
17 staff, including paralegals and clerical assistants;
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19 b. opposing parties and their representatives, officers, agents,
20 and/or employees who are directly involved in, and whose
21 access to such Discovery Material is reasonably required for,
22 the management, prosecution, defense, or settlement of this
23 Litigation or the supervision of counsel of record;
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25 c. subject to the provisions of paragraph 7 below, non-party
26 witnesses who are called to be deposed during discovery or
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1 trial, whether willingly or under subpoena issued by a court of
2 competent jurisdiction over the witness;

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4 d. stenographic, court reporting, or clerical personnel;

5 e. in-house counsel for the parties to this litigation;

6 f. subject to the provisions of paragraph 7 below, experts and
7 consultants and their staff who are employed for the purposes
8 of this Litigation; and

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10 g. the Court, including necessary secretarial, clerical, and support
11 personnel assisting the Court.
12

13 6. The inadvertent or unintentional disclosure by the Producing Party of
14 Confidential Material, regardless of whether the material was so designated at the
15 time of disclosure, shall not be deemed a waiver in whole or in part of the
16 Producing Party's claim of confidentiality, either as to the specific information
17 disclosed or as to any other information relating to the same or related subject
18 matter, provided that the Producing Party shall promptly upon discovery of the
19 inadvertent or unintentional disclosure notify the receiving party in writing that the
20 information is Confidential. Such notification shall constitute a designation of the
21 information and thereby subject it to the provisions of this Order. Disclosure by
22 the receiving party of inadvertently or unintentionally disclosed Confidential
23 Material prior to receipt of such notice shall not be deemed a violation of this
24 Order. However, those persons to whom disclosure was made are to be advised by
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1 the receiving party that the information is Confidential and must be treated in
2 accordance with this Order, and the receiving party must (1) make a good faith
3 effort to retrieve and return all copies of such inadvertently disclosed information
4 which have been disseminated to unauthorized persons, including any notes,
5 summaries, compilations or other documents concerning same, and (2)
6 immediately mark, in accordance with the designations made by the producing
7 party, all copies of such inadvertently disclosed Confidential Material which are in
8 the possession of authorized persons.

11
12 7. No person described under Paragraphs 5(c) and 5(f) may access
13 Discovery Material designated “CONFIDENTIAL” until such person agrees to be
14 bound by the terms of this Order by executing the undertaking in Exhibit A.
15 Before any other person described in Paragraph 5 is shown any Discovery Material
16 designated “CONFIDENTIAL”, that person must be shown a copy of this
17 Protective Order and instructed that he or she is bound by its provisions.

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20 8. If Discovery Material subject to a claim of attorney-client privilege,
21 work product protection, or any other privilege or immunity is inadvertently
22 produced, such production shall in no way prejudice or otherwise constitute a
23 waiver of, or estoppel as to, any claim of privilege, work product protection, or
24 other ground for withholding production to which any Producing Party would
25 otherwise be entitled. Any inadvertently produced materials shall be returned
26 promptly to the Producing Party upon request and all copies destroyed.
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1 9. The parties may also informally agree in writing that Confidential
2 Material may be disclosed to a person not otherwise qualified under this Order to
3 receive such information. In the event that a party intends to disclose Confidential
4 Material to a person not qualified to receive such information hereunder (for
5 example, for use at a deposition), and the parties cannot informally agree, a party
6 may request the Court rule on such disclosure. The parties agree that the
7 submission of Confidential Material to such person will be withheld pending the
8 ruling from the Court. If the Court orders, or if the Producing Party agrees, that
9 access to or dissemination of Discovery Material submitted as Confidential
10 Material shall be made to persons not qualified to receive such information
11 hereunder, such matter shall only be accessible to, or disseminated to, such persons
12 based upon the conditions pertaining to, and obligations arising from this Order,
13 and such persons shall be considered subject to it, unless the Court finds that the
14 Discovery Material does not constitute Confidential Material.
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16 10. All Confidential Material produced in this Litigation may be used
17 only for purposes of this Litigation, including the litigation itself, any appeals, and
18 settlement and/or licensing negotiations intended to resolve this Litigation. All
19 Confidential Material shall be maintained and used by the parties and any person
20 listed in Paragraph 5 only in the strictest of confidence and not disclosed to any
21 other person without the prior, written consent of the Producing Party or upon
22 order by the Court.
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1 11. Deposition Procedures: In the event that a deposition in this litigation
2 is attended by a person not authorized to receive Confidential Material, then any
3 other party may have such person excluded from the deposition during any
4 portion(s) of the deposition that it reasonably believes may result in the disclosure
5 of its Confidential Material.
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8 12. Response to a Subpoena / Public Records Act Request/Court Order: In
9 the event that a receiving party receives a subpoena or public records act request
10 requesting or is ordered by another court or governmental entity to produce the
11 Confidential Material of another party, the receiving party shall notify the
12 Producing Party immediately of that subpoena, request or order and shall promptly
13 provide said subpoena, request or order, if it is in writing, to the Producing Party so
14 that the Producing Party may object to the subpoena, request or order. If the
15 Producing Party chooses to object to the subpoena, request or order, it shall
16 provide a copy of said objection to the receiving party. If the receiving party
17 receives nothing from the Producing Party prior to the time for its compliance with
18 the subpoena, request or order, the receiving party may comply with its obligations
19 under the subpoena, request or order.
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24 13. In the event a party wishes to use any Confidential Material, or any
25 papers containing or making reference to the contents of such material or
26 information, in any pleading or document filed with the court in this Litigation,
27 such pleading or document and Confidential Material shall be filed under seal
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1 utilizing the procedures set forth in Local Rule 79-5.1, until such time as the court
2 orders otherwise or denies permission to file under seal. The sealed material,
3 information, or papers shall plainly state on the first page of any bound or stapled
4 document "FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER."
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6 The restrictions, if any, that will govern the use of Confidential Material at trial or
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8 hearings will be determined at a later date by the court, in consultation with the
9 parties.

10 14. Notwithstanding any other provision of this Order, a party producing
11 Confidential Material may choose to withdraw its designation by doing so in
12 writing.
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14 15. Nothing in this Order or in the parties' Stipulation constitutes a
15 finding or admission that any of the information disclosed or contained in the
16 designated items is or is not confidential, and nothing herein shall prevent any
17 party from contending, during the progress of this Litigation, that any or all of such
18 information is not confidential. Any party may request from the Producing Party a
19 change in the designation of any item or information and/or permission to disclose
20 such item or information to persons in addition to those specified herein in
21 Paragraph 5. Such request shall be in writing, state the grounds, and be served on
22 all counsel including counsel for the Producing Party. The requested change shall
23 occur or the requested permission shall be granted, unless an objection for good
24 cause is served on the requesting party within twenty (20) business days after
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1 service of such request. In the event such objection is timely served, neither the
2 requested change shall occur nor the requested permission shall be granted, until
3 the objection is resolved by written agreement of the parties or Order of this Court.
4 In any disagreement over a designation, the party making the designation bears the
5 ultimate burden of showing that the designation is proper. No party to this
6 Litigation shall be obligated to challenge the propriety of any designation, and a
7 failure to do so shall not act as a waiver of its right to make a subsequent attack on
8 the propriety of such designation, nor shall such failure to challenge constitute an
9 admission that any information is, in fact, confidential. Any designation of
10 information as Confidential Material shall govern hereunder unless and until such
11 designation is modified by the designating party, the Court, or agreement of the
12 parties.

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17 16. Production by Non-Parties: If any Confidential Material is produced
18 by a non-party to this Litigation, such non-party shall be considered a Producing
19 Party within the meaning of those terms as used in the context of this Order and
20 shall have the right to designate information as "CONFIDENTIAL."

21
22 17. The designation of any material in accordance with this Order as
23 Confidential Material is intended solely to facilitate the preparation and trial of this
24 Litigation, and treatment of such material by the parties in conformity with such
25 designation will not be construed in any way as an admission or agreement by any
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1 party that the designated material constitutes or contains any trade secret,
2 Confidential Material.

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4 18. Upon final termination of this Litigation, each party and other person
5 subject to the terms of this Order, including individuals required to execute the
6 undertaking attached hereto as Exhibit A, shall, within sixty (60) days of said
7 termination, assemble (including from all officers, employees, and in-house
8 counsel of the party, all support staff, and all experts and consultants) and return to
9 the Producing Party all Discovery Material designated as "CONFIDENTIAL,"
10 including all copies and other items of such Discovery Material, or in the
11 alternative and at the option of the Receiving Party, retain permanently all such
12 Discovery Material so long as the Receiving Party continues to maintain
13 confidentiality.
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17 19. Nothing in this Order shall be deemed a waiver of any right that any
18 party might otherwise have under the Federal Rules of Civil Procedure or the
19 Federal Rules of Evidence or the doctrines of attorney-client privilege or attorney-
20 work product. This Order shall be without prejudice to any party to oppose
21 production of any information or items on any ground permitted by the Federal
22 Rules.
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25 20. Nothing in this Order shall affect a party's use or disclosure of its own
26 Confidential Material in any way.
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1 21. Any modification of this Order, including the incorporation of any
2 additional parties appearing in the litigation must be made in writing.
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4 **IT IS SO ORDERED.**
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6 DATED this 11th, day of March, 2013.
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10 Hon. Manuel L. Real
11 UNITED STATES DISTRICT JUDGE
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PROTECTIVE ORDER: EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CITY OF LOS ANGELES,
ACTING BY AND THROUGH ITS
BOARD OF HARBOR
COMMISSIONERS,

Plaintiff,

v.

NATIONAL UNION FIRE
INSURANCE COMPANY OF
PITTSBURGH, PA., and Does 1
thru 10, Inclusive

Defendant.

CASE NO. CV 2:12-cv-07662-R
(AGRx)

Hon. Manuel L. Real

**UNDERTAKING PURSUANT TO
PROTECTIVE ORDER**

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1 5. Further, I shall, upon notification that this litigation has terminated,
2 return any and all originals and/or copies of the documents and things to counsel
3 for the party who provided such documents, and I shall destroy any notes or
4 memoranda I have which in any way concern the substance embraced by such
5 documents, things and/or information.
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7 6. I do and shall subject myself to the continuing jurisdiction of the
8 above-captioned Court over my person, wherever I shall be found, for purposes of
9 enforcement of the Protective Order.
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13 Date: _____
14 [signature]

15 Subscribed and Sworn to before me this
16 _____ day of _____, 2013.
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18 _____
19 Notary Public
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